IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

JAMES E. MONK,

Plaintiff,

v. **Case No.: 3:20cv518**

DONALD W. GULICK, JR.

LUCAS C. CURTIS, and

BRANDON SCHILKE,

Defendants.

AMENDED COMPLAINT

COMES NOW, the Plaintiff, JAMES E. MONK, (hereafter "Plaintiff" or "Monk"), by counsel, and hereby files his Complaint against the Defendants, Donald Gulick, Jr. ("Gulick"), Lucas Curtis, ("Curtis"), and Brandon Schilke ("Schilke"). In support of thereof, the Plaintiff states as follows:

INTRODUCTION

1. This is a civil rights action in which the Plaintiff, James E. Monk, seeks relief for Defendants collective violation of his rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States and made actionable pursuant to 42. U.S.C. §§ 1983 and 1988. Monk also brings this action to address personal injury suffered at the hands of the defendants under the laws of the Commonwealth of Virginia. Monk seeks compensatory and punitive damages, an award of costs, interest, attorney's fees, and such other and further relief as the Court deems just and proper.

2. At the time of these events, an unsettling trend had emerged nationwide where law enforcement officers increasingly have been exposed for the unprofessional, overzealous, dangerous, and sometimes deadly practice of abusing their authority and retaliating against the citizens who question them or voice their dissent of any perceived misconduct. On March 28, 2018, James Monk became another victim of this unacceptable trend.

3. The plaintiff alleges that Defendant, Donald Gulick and others listed herein, all of whom are or were officers with the Chesterfield County Police Department, acting under the color of state law, did unreasonably stop, seize and unlawfully arrest him without probable cause, in violation of Monk's established right to be free from unreasonable seizure under the Fourth Amendment.

4. That the initial stop, which occurred just past midnight at approximately 12:30 a.m., allegedly for improper tint, was no more than mere pretense and not supported by any reasonable articulable suspicion that criminal activity was afoot. There is no evidence that Gulick or any Defendant ever evaluated the level of tint with a meter to confirm/dispel their suspicions.

5. Further, that Defendant Gulick and other Defendants improperly seized and arrested Monk absent probable cause.

6. Defendant Gulick and other named defendants, acting under color of state law, used excessive force, as described herein, against Monk during the unlawful seizure and arrest, causing him bodily injury, in spite of his clearly established right to be free from the use of unreasonable and excessive force.

7. Defendant Gulick intentionally and maliciously instituted, or caused to be instituted, a prosecution for obstruction of justice against Monk, without probable cause, and

continued to do so seeking a new warrant or indictment after the original warrant had been nolle prossed or dismissed.

PARTIES

8. Plaintiff, James E. Monk is a natural person and citizen of the United States, domiciled in the Commonwealth of Virginia.

9. Defendant, Donald W. Gulick, Jr. is a natural person and citizen of the United States, domiciled in the Commonwealth of Virginia. At all relevant times herein, Defendant Gulick was employed by the County of Chesterfield as a police officer with the Chesterfield Police Department.

10. Defendant, Lucas C. Curtis is a natural person and citizen of the United States, domiciled in the Commonwealth of Virginia. At all relevant times herein, Defendant Curtis was employed by the County of Chesterfield as a police officer with the Chesterfield Police Department.

11. Defendant, Brandon Schilke is a natural person and citizen of the United States, domiciled in the Commonwealth of Virginia. At all relevant times herein, Defendant Schilke was employed by the County of Chesterfield as a police officer with the Chesterfield Police Department.

12. Brian Anderson, who is not a party to this suit but referenced in portions of the complaint, is a natural person and citizen of the United States, domiciled in the Commonwealth of Virginia. At all relevant times herein, Brian Anderson was employed by the County of Chesterfield as a police officer with the Chesterfield Police Department.

13. At all relevant times herein, Defendants Gulick, Curtis, and Schilke were acting under color of state law. Defendants Gulick, Curtis, and Schilke are being sued in their individual capacity.

JURISDICTION AND VENUE

14. This court has subject matter jurisdiction pursuant to Va. Code § 17.1-513, as the amount in controversy exceeds $25,000.

15. This Court has personal jurisdiction over the Defendants pursuant to Va. Code § 8.01-328.1 (A)(3).

16. Venue is proper in this Court pursuant to Va. Code § 8.01-262, as the acts and omissions giving rise to the claims herein arose in Chesterfield County.

FACTUAL ALLEGATIONS

17. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs of the Complaint by reference and incorporation, as if fully set forth herein.

18. On or about March 28, 2018 at approximately 12:30 am, James Monk was driving on Second Avenue in Ettrick Virginia near the Multipurpose Building of Virginia State University.

19. Monk was in route to take a female companion back to her dorm located on VSU's campus when he was pulled over by Gulick.

20. Upon approaching the driver's side window, Monk greeted Gulick and was advised by Gulick that he had been stopped because his window tint appeared to be too dark.

21. Gulick did nothing to confirm or corroborate his stated reason for the stop during his initial approach of the vehicle or anytime thereafter.

22. The vehicle Monk was driving was borrowed from a friend. Monk did not own the car nor was it registered in his name.

23. Gulick asked Monk if he had a license, to which Monk replied that he did not have his physical license in his possession at the time, but that he was a licensed driver.

24. Monk proceeded to provide Gulick with pertinent identifying information. Gulick presumably noted the information Monk provided and returned to his patrol vehicle.

25. Gulick can be heard verifying Monk's license status on his department issued body worn camera while in his patrol vehicle. Gulick can also be heard relaying to control and /or other officers that he smelled a strong odor of marijuana on the driver and passenger and expressing his intent to detain them.

26. While Gulick confirmed Monk's information, two additional patrol units arrived on scene. Officers Lucas Curtis and Brian Anderson were the first to arrive together, while Officer Brandon Schilke arrived moments thereafter. Upon information and belief, Anderson and Curtis were in a patrol unit together because Curtis was acting as the field training officer for Brian Anderson on the night of this incident.

27. As evidenced by body worn camera (hereinafter "BWC") and the Chesterfield County Police Incident Report, Gulick and Schilke approached the driver's side of the vehicle, while Anderson approached the passenger side, with Curtis initially observing. Each officer was aware of Gulick's intention to detain Monk prior to his re-approach to the car.

28. The passenger side of the vehicle was occupied by Monk's companion, later identified as Mahelete Tesfye. Ms. Tesfye is advised that she is being detained by Anderson and is handcuffed while Gulick and Schilke, now joined by Curtis, address Monk.

29. On his BWC, Gulick can be heard asking Monk to step out of his vehicle, to which Monk complied. In the process, Monk begins to ask Gulick if everything was alright, whether there a problem with his information, or if he had a warrant or other problem to which he was unaware?

30. Upon information and belief, Gulick responded that he would explain or talk about all of that in a moment.

31. After fully stepping out of the vehicle and standing face to face with Gulick with his hands to his side, Monk is asked to turn around to face the vehicle.

32. In response, Monk initially began to turn to face the car as instructed and again asks what this is all about.

33. Gulick then escalated the encounter by grabbing Monk's arm to physically force him to turn to face the vehicle in an effort to place him in handcuffs. At the time, the attempt to place Monk in handcuffs came with no explanation from Gulick or any other officer as to reasons why he was being detained. Further, at no time during the encounter does Monk make a move or gesture towards Gulick or any other defendant.

34. Monk again questions why Gulick was trying to cuff him and simultaneously stiffens to Gulick's touch before completing a 180 degree turn to face the vehicle.

35. Gulick then leans closer to Monk and states "because you smell like weed."

36. At the moment Monk questioned his physical seizure and/or arrest, Schilke joins Gulick and Curtis now becoming physically engaged with Monk as well. All the while, Monk can be heard asking, why is this happening? Monk can then be heard stating, apparently to an open cell phone line, that the defendants are trying to bank him and asking the person on the open line to come to the quad. It was later determined that the person with whom Monk was speaking was his friend and owner of the car Monk was driving before he was stopped.

37. Monk continues to stiffen to Gulick's touch and now Gulick, Schilke and Curtis each have Monk within their grasp, attempting to bring his arms behind his back while the front of his body is pressed up against the car.

38. Upon information and belief, Schilke then openly inquires "to the ground?" at which time Gulick responds in the affirmative. Schilke then backs off and immediately draws his department issued taser taking aim at Monk while Gulick and Curtis attempt to slam Monk to the ground.

39. Upon drawing his taser, Schilke exclaims, "Watch out. Watch out. Taser, taser, taser. Taser, taser, taser" presumably to warn Gulick and Curtis that he is about to deploy. Schilke also audibly arches his taser at least once at this time. (Exhibit 1, Schilke BWC)[1]

40. At this point, no warning has been issued to Monk advising that he is about to be tased.

41. In response to Schilke's words, Curtis releases his grasp on Monk and backs away. Monk then appears to lose his balance when Curtis releases him and he stumbles. From Schilke's BWC, it can be seen that Monk is now acutely aware and fearful that Schilke is about to deploy his taser, and he falls to the ground from the grasp of Gulick who is either backing away for the same reason as Curtis, or loses grip of Monk as he falls.

42. Monk attempts to recover from his fall by sitting up and Gulick immediately yells for him to stay down while pushing him down to pavement on his arm/shoulder. Monk now has two tasers with targeting lasers drawn on him, as Curtis has also drawn his taser following Schilke's lead.

43. Curtis then holsters his taser to again join Gulick with hands on Monk.

44. Monk can be heard pleading, "Please, don't tase me, I'm not doing anything to y'all," in response to Schilke's still drawn taser and commands to "roll or get on [his] stomach."

[1] Exhibits referenced herein are not attached and have previously been provided to the Court.

45. While on the ground, Gulick and Curtis make some attempt to roll Monk to his stomach but are unable to do so.

46. In response, Curtis delivers what would be the first in a series of closed fisted, distractionary blows to Monk's right side. [2] (Exhibit 2, Curtis, Chesterfield County Police Incident Full Report)

47. All defendants continued to yell commands to Monk for him to get on his stomach.

48. Without attempting to go hands on again, Gulick then deploys pepper spray to Monk's face.

49. Monk is now blinded by the pepper spray and can no longer see what defendants are doing.

50. Defendants collectively continue to yell commands for Monk to get on his stomach.

51. While Monk did not roll to his stomach as commanded, he remained on the pavement, on his back, with his hands raised, either above his head or at his face, in an apparent attempt to wipe away pepper spray for relief in response to being sprayed, the entire time asking, "why is this happening?"

52. Schilke now directs Anderson, who is standing at the rear of the car with the detained passenger and unengaged up until now, to assist Gulick and Curtis while Schilke stands at the ready with his taser still drawn and pointing at Monk. (Exhibit 1, Schilke BWC)

53. Inexplicably, one by one, Gulick, Curtis, and Anderson release Monk and step away to draw tasers and yell commands for him to get on his stomach. Defendants have now each drawn

[2] Schilke also strikes Monk with a closed fist about his abdomen and mid-section at a later time during the encounter.

tasers and threatened deployment. Tasers can be heard arching and preparing for discharge on the BWC's worn by each officer.

54. At one point, the words "pepper spray" are mentioned again, upon information and belief by Curtis, and Monk begins to roll over towards his stomach, away from Schilke. Apparently rolling to his stomach in a direction not approved by Schilke, Monk is inexplicably pulled back in the opposite direction, back on to his back by Schilke, who still has his taser drawn and aimed with his right hand.

55. Curtis then deploys pepper spray a second time, while all defendants continue to collectively yell for Monk to get on his stomach with tasers drawn.

56. Schilke then moves in and delivers the second set closed fist distractionary blows to Monk's abdomen in an effort to get his hands from under him. (Exhibit 2, Schilke, Chesterfield County Police Incident Full Report)

57. Defendants step away for a second time, all pointing their tasers. Gulick then exclaims, "that's it" and deploys his taser striking Monk in the mid region of his body, both barbs making contact with Monk's front upper torso. At the time of taser deployment, Monk was lying on back with his hands raised above his head. Monk had also repeatedly begged defendants not to deploy tasers.

58. Once tased, Monk immediately rolls to his stomach and is handcuffed by defendants. He is immediately searched, and involuntary movements to pain during the search are met with commands to stop moving and threats of additional shocks from the taser.

59. Monk is left to remain cuffed behind his back on the pavement, lying on his stomach and/or his side for more than 15 minutes. During which time, he received no treatment for the pepper spray and the barbs from the taser probes are left piercing his abdomen.

60. Deploying a taser is a serious use of force. Police issued tasers are weapons that send up to 50,000 volts of electricity through a victim's body, effectively commandeering the victim's central nervous system. As a result, the recipient is temporarily paralyzed and experiences excruciating pain.

a. Statistically, tasers kill approximately one person a week in the U.S.

b. Among other things, tasers cause a high electrical charge to flow through a victim's body for a minimum period of five seconds which can cause cardiac complications.

c. A taser gun uses compressed nitrogen to propel a pair of probes (aluminum darts tipped with stainless steel barbs connected to the gun by insulated wires) toward the target at a force rate of over 160 feet per second.

d. The impact is powerful and swift, "seizing" the victim in an abrupt and violent manner. The impulse instantly overrides the victim's central nervous system, paralyzing the muscles throughout the body, rendering the target limp and helpless.

e. Persons tasered lose muscular control, and if standing, may fall, uncontrolled, face first onto the pavement. Such falls have been known to cause loss of teeth, facial abrasions, concussions, swelling and scars.

f. Tasered persons also experience an intense, excruciating pain that radiates throughout the body. Tasers have burned flesh. Beyond the experience of pain, tasers have resulted in disorientation, loss of balance, and weakness, even after the electrical current has ended.

g. Additionally, tasing causes the barbed probes to be lodged into the flesh, requiring removal by medical personnel or officers specifically trained in their removal.

h. Also, tasers may leave an acute psychological wound.

i. While some consider tasers non-lethal force, non-lethal is not to be deemed synonymous with non-excessive. Courts have consistently held that all force, lethal and non-lethal, must be justified by the need for the specific level of force employed.

j. A taser intrudes upon a victim's physiological functions in a way that other non-lethal uses of force do not. By way of example, pepper spray causes intense pain and acts upon the target's physiology. Those effects are limited to the target's eyes or respiratory system. Conversely, the pain delivered by a taser is extremely intense and is not localized or gradual.

k. Accordingly, for the purposes of the Fourth Amendment, the "nature and the quality" of the intrusion into victim's interests is quite severe when tasers are used.

61. At the time of this arrest, each Defendant herein had completed training on the use of force.

62. Additionally, each had undergone re-certification and retraining on the use, deployment, and post-deployment care for persons tased with department issued tasers as recently as January of 2018. (Exhibits 3, 4 and 5, Recorded Statements, Schilke, Curtis, and Gulick)

63. Further, Defendant Curtis was a certified taser instructor for the Chesterfield County Police Department. (Exhibit 4, Recorded Statement, Curtis)

64. Defendants were aware that recent Chesterfield County Police policy and training, consistent with attendant legal precedent,[3] prohibited the use and deployment of tasers absent an immediate danger to officers or bystanders, and that use of tasers as a medium for compliance was prohibited. (Exhibits 3, 4, and 5, Recorded Statements, Schilke, Curtis, and Gulick)

65. Monk was unarmed at the time force was used against him.

66. At no time during the encounter did Monk attempt to flee or attempt to cause harm to Defendants, or any other person.

67. As a direct result of Defendants' unreasonable and excessive use of force, Monk suffered multiple scrapes and bruises, headaches, radiating pain to his left side, and burning/irritated eyes, requiring medical treatment.

68. Following the unlawful detention and arrest, Monk was physically searched. The passenger compartment of the car was searched as well.

69. The search of Monk's person and the search of the car produced no marijuana, drugs, or illicit substances of any kind.

70. Upon information and belief, after he received treatment from EMS workers, Monk was transported to the magistrate where Defendant Gulick attempted to secure a Class 5 felony warrant for obstruction by threat or bodily harm pursuant to Virginia Code § 18.2-460 C.

71. Upon information and belief, the magistrate refused to grant a felony warrant for obstruction, presumably finding that no threat or bodily harm existed during the encounter. (Exhibit 2, Gulick, Chesterfield County Police Incident Full Report) A misdemeanor warrant for obstruction was issued instead.

[3] Estate of Armstrong v. Vill. Of Pinehurst, 810 F.#d 892 (4th Circ. 2016).

72. Upon information and belief, the misdemeanor obstruction charges were nolle prossed by the Assistant Commonwealth's Attorney assigned to the prosecution of the charges, presumably concluding:

a. Gulick lacked probable cause to seize or arrest Monk;

b. That Monk rightfully resisted his unlawful arrest; and

c. That the use of force was unnecessary and excessive under the circumstances presented.

73. Upon information and belief, Defendant Gulick then had the matter reviewed by a different Assistant Commonwealth's Attorney and secured a second misdemeanor warrant for obstruction of justice.

74. As a direct and proximate result of Defendants' unlawful conduct, James Monk suffered substantial injuries. These injuries include, but are not limited to, deprivation of rights under the Constitution of the United States, physical injury and impairment, conscious pain and suffering, emotional distress, anxiety, medical expenses, legal expenses in defending against a false and baseless charge, and loss of liberty.

75. Monk is entitled to compensatory damages from all Defendants, jointly and severally, for each of the enumerated injuries.

76. Monk is also entitled to punitive damages on specifically enumerated claims against Gulick, Curtis and Schilke to redress Monk's suffering as a result of the Defendants' willful, malicious, wanton, reckless, and deliberately indifferent conduct and to deter Defendants Gulick, Curtis, Schilke and others from engaging in such unlawful conduct in the future.

CLAIMS FOR RELIEF

COUNT I
42 U.S.C. § 1983-UNLAWFUL SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT—THE STOP

77. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs of the Complaint by reference and incorporation, as if fully set forth herein.

78. 42 U.S.C. § 1983 provides in pertinent part, that:

> Every person who, under color of any statue, ordinance, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

79. Monk is citizen of the United States and Defendant Gulick, is a person for the purposes of 42 U.S.C. § 1983.

80. Gulick, at all relevant times herein, was acting under color of state law in his capacity as an officer for the Chesterfield Police Department and each of his acts and/or omissions were conducted within the scope of his official duties or employment.

81. At the time of the events complained of herein, Monk had a clearly established constitutional right under the Fourth Amendment, as applied to the States under the Fourteenth Amendment, to be free from unreasonable detention and seizure by law enforcement without probable cause.

82. Any reasonable police officer knew or should have known, by virtue of his or her training and experience, of these rights at the time of the events complained of herein as they were clearly established at that time.

83. At the time Gulick conducted a traffic stop of Monk, Gulick did not have probable cause to subject Monk to detention or seizure for a criminal offense.

84. Gulick's seizure and subsequent detention of the Monk, as described herein, based upon a purportedly excessive window tint, was based on pretense, lacked probable cause, and therefore, was objectively unreasonable in violation of Monk's clearly established rights guaranteed and secured under the Fourth Amendment.

85. Gulick, knowingly and deliberately subjected Monk to seizure, physical force, and restraint without probable cause.

86. Gulick violated Monk's clearly established constitutional rights and is not entitled to qualified immunity for the conduct complained of herein.

87. Gulick's acts and/or omissions, as described herein, were intentional, willful, malicious, and done with the callous, sadistic and gratuitous purpose of inflicting physical and mental harm upon Monk, as well as exerting an unlawful display of authority upon Monk.

88. Gulick acted with conscious-shocking and willful indifference to Monk's right to be free from unreasonable detention and seizure, and to be free from excessive force, and with conscious disregard that their conduct would deprive Monk of this constitutionally protected right.

89. As a direct and proximate result of Gulick's unlawful conduct, Monk suffered a deprivation of his constitutional rights to be free from unlawful and unreasonable seizure under the Fourth Amendment, severe bodily injury, conscious pain and suffering, economic loss, humiliation, and mental distress. Accordingly, Defendant Gulick is liable to Monk for deprivation of his rights in violation of 42 U.S.C. 1983.

90. In addition to compensatory, consequential, and special damages, Monk is entitled to punitive damages against Gulick under 42 U.S.C. 1983, in that Gulick's actions were undertaken maliciously, willfully, and/or with a reckless or wanton disregard of Monk's constitutional rights.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against Gulick, and hold him liable to Monk for the sum of $250,000.00 in compensatory damages, $200,000.00 in punitive damages, pre-judgment and post-judgment interest, reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988, and any additional relief as the Court may deem appropriate.

COUNT II
42 U.S.C. § 1983-EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AMENDMENT

91. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs of the Complaint by reference and incorporation, as if fully set forth herein.

92. 42 U.S.C. § 1983 provides in pertinent part, that:

> Every person who, under color of any statue, ordinance, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

93. Monk is citizen of the United States and Defendants Gulick, et al are each persons for the purposes of 42 U.S.C. § 1983.

94. Defendants, at all relevant times herein, were acting under color of state law in their capacities as officers for the Chesterfield Police Department and each of their acts and/or omissions were conducted within the scope of their official duties or employment.

95. At the time of the events complained of herein, Monk had a clearly established constitutional right under the Fourth Amendment, as applied to the States under the Fourteenth Amendment, to be secure in his person from unreasonable seizure by excessive force.

96. At the time of the events complained of herein, Monk also had a clearly established constitutional right under the Fourth Amendment to bodily integrity.

97. Any reasonable police officer knew or should have known, by virtue of his or her training and experience, of these rights at the time of the events complained of herein, as they were clearly established at that time.

98. Defendants' use of force, as described herein, was objectively unreasonable in light of the facts and circumstances confronting them and violated Monk's Fourth Amendment rights. The relevant facts include, but are not limited to, that despite lacking probable cause to arrest plaintiff:

a. Gulick forcefully grabbed plaintiff by the arm and spun him around even as plaintiff was then already turning around in voluntary compliance with the officer's command to turn to face his vehicle; and

b. Schilke then also forcefully grabbed plaintiff; and

c. Schilke then drew his taser, threatened deployment, warning Gulick and Curtis of his intended deployment in an effort to force compliance when Monk posed no immediate threat to any officer or bystander; and

d. Gulick and Curtis then together forcefully tossed plaintiff down onto the hard street surface; and

e. Curtis struck approximately 3 sharp, forceful blows with his fist to plaintiff's torso as plaintiff lay on the ground and was not making any aggressive or threatening actions against him or any other officer; and

f. Gulick pepper sprayed plaintiff in his eyes and face, blinding plaintiff and rendering him unable thereafter to see what the officers were doing; and

g. Curtis pepper sprayed plaintiff in his eyes and face a second time, even though plaintiff was making no aggressive or threatening actions toward the officers or anyone else; and

h. Schilke struck plaintiff about his torso with several forceful blows as plaintiff lay on the ground, displaying no aggressive or threatening actions towards him or any other officer; and

g. Gulick tased plaintiff absent the exigency of an immediate threat and without sufficient provocation to do so, with both barbs making contact to plaintiff's mid-section. At the time Gulick tased plaintiff, plaintiff was not resisting in a manner that, in the judgment of any reasonable officer, presented a risk of immediate danger to himself or others. Indeed, plaintiff was not actively resisting any officer at all. Rather, at the time Gulick tased plaintiff, plaintiff was, and at all times relevant to the tasing, laying on the ground, on his back, surrounded by 4 armed officers, with his hands raised above his head, pleading with the officers to stop their assaultive and

aggressive actions toward him, and never made any aggressive, threatening or dangerous action toward any officer or other persons.

99. The forgoing Defendants collectively participated in the application of excessive and objectively unreasonable force against Monk, depriving him of bodily integrity, life, liberty, and due process of law. To wit, the Defendants, with actual or constructive knowledge that Chesterfield County Police Department's use of force policies prohibited the use of tasers in the absence of exigent circumstances constituting an immediate threat of harm to officers or bystanders, and that deployment of tasers were not to be used as a method to gain compliance, notwithstanding, deployed, or were prepared to deploy tasers, upon an individual who simply displayed non-violent resistance to being handcuffed. Such deployment was excessive and unreasonable.

100. Defendant Curtis, being a certified taser instructor for the Chesterfield Police Department, was acutely aware of these policies and the law from which those policies were derived.

101. Also, or alleged in the alternative, the foregoing defendants violated Monk's rights to bodily integrity, life, liberty and due process of law by failing to take reasonable steps to prevent Gulick from deploying his taser in light of actual and constructive knowledge of the aforementioned policies and procedures governing taser deployment. More specifically, the defendants knew or should have known that Gulick was intending to take action that would violate Monk's constitutional rights, had a reasonable opportunity to intervene to prevent or at least interfere with this unconstitutionally employed excessive use of force, yet did nothing. Indeed, not only did the Defendant's do nothing to prevent Gulick from firing his taser, they actively

assisted by pointing and arching their tasers, ordering compliance, and stepping away to allow Gulick to deploy.

102. Defendants' actions and use of force, as described herein, were also malicious, reckless, callous, and deliberately indifferent to Monk's constitutionally protected rights and physical safety.

103. Defendants' uses of force were grossly disproportionate to any and all risk facing them or others at the time.

104. The force used – *inter alia*, Gulick and Curtis together forcefully slamming plaintiff's body down onto the hard street surface; Curtis' striking approximately 3 sharp, forceful blows with his fist to Monk's rib and torso area as he lay helpless on the ground while being held by other officers; Gulick and Curtis each separately pepper spraying plaintiff in his face and eyes; Schilke striking several forceful blows with his fist to Monk's torso, Gulick tasing plaintiff even as plaintiff remained laying on the ground, on his back, surrounded by 4 armed officers, with his hands raised above his head presenting no risk of immediate danger to any officer or other person, - constituted deadly force in that it could have caused death and did cause serious bodily injury, namely, cuts, scrapes, bruises, headaches, strained muscles, back pain, temporary blindness, and physical and emotional distress.

105. As Defendants Gulick, Curtis, and Schilke violated Monk's clearly established constitutional rights, they are not entitled to qualified immunity for the conduct complained of herein.

106. Defendants' acts and/or omissions, as described herein, were intentional, willful, malicious, and done with the callous, sadistic and gratuitous purpose of inflicting physical and mental harm upon Monk, as well as exerting an unlawful display of authority upon Monk.

107. At the time of these physical attacks on Monk, he posed no immediate threat to defendants Gulick et al or any other person.

108. Defendants acted with conscious-shocking and willful indifference to Monk's right to free from excessive force and with conscious disregard that their conduct, both individually and collectively, would cause Monk severe physical and mental injury.

109. As a direct and proximate result of Defendants' unlawful conduct, Monk suffered a deprivation of his constitutional rights to bodily integrity and to be fee from unlawful seizure through excessive force under the Fourth Amendment, severe bodily injury, conscious pain and suffering, economic loss, humiliation, and mental distress. Accordingly, Defendants are liable to Monk for their deprivation of his rights in violation of 42 U.S.C. § 1983.

110. In addition to compensatory, consequential, and special damages, Monk is entitled to punitive damages against Defendants under 42 U.S.C.§ 1983, in that their actions were undertaken maliciously, willfully, and/or with a reckless or wanton disregard of Monk's constitutional rights.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendants Gulick, Curtis, and Schilke, and hold them liable, jointly and severally, to Monk for the sum of $400,000.00 in compensatory damages, $500,000.00 in punitive damages, pre-judgment and post-judgment interest, reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988, and any additional relief as the Court may deem appropriate.

COUNT III

42 U.S.C. § 1983-UNLAWFUL SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT

111. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs of the Complaint by reference and incorporation, as if fully set forth herein.

112. 42 U.S.C. § 1983 provides in pertinent part, that:

> Every person who, under color of any statute, ordinance, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

113. Monk is citizen of the United States and Defendants are each persons for the purposes of 42 U.S.C. § 1983.

114. Defendants at all relevant times herein, were acting under color of state law in their capacities as officers for the Chesterfield Police Department and each of their acts and/or omissions were conducted within the scope of their official duties or employment.

115. At the time of the events complained of herein, Monk had a clearly established constitutional right under the Fourth Amendment, as applied to the States under the Fourteenth Amendment, to be free from unreasonable seizure by law enforcement without probable cause.

116. Any reasonable police officer knew or should have known, by virtue of his or her training and experience, of these rights at the time of the events complained of herein as they were clearly established at that time.

117. At the time Defendants Gulick, Curtis and Schilke forcefully seized Monk by grabbing Monk by the arms, spinning him around, forcefully pulling his hands behind his back, attempting to forcefully hand-cuff Monk behind his back, together slamming Monk down to hard street surface and otherwise subjecting Monk to physical force and restraint as described herein,

Defendants Gulick and Curtis did not have probable cause to subject Monk to seizure for any criminal offense.

118. Defendants Gulick, Curtis, and Schilke's forceful seizure of the plaintiff, as described herein, based solely upon a purported odor of marijuana lacked probable cause, and therefore, was objectively unreasonable in violation of Monk's clearly established rights guaranteed and secured under the Fourth Amendment.

119. Defendants knowingly and deliberately subjected Monk to seizure, physical force, and restraint without probable cause.

120. Defendants violated Monk's clearly established constitutional rights and are not entitled to qualified immunity for the conduct complained of herein.

121. Defendants' acts and/or omissions, as described herein, were intentional, willful, malicious, and done with the callous, sadistic and gratuitous purpose of inflicting physical and mental harm upon Monk, as well as exerting an unlawful display of authority upon Monk.

122. Defendants acted with conscious-shocking and willful indifference to Monk's right to free from excessive force and with conscious disregard that their conduct would deprive Monk of this constitutionally protected right.

123. As a direct and proximate result of Defendants' unlawful conduct, Monk suffered a deprivation of his constitutional rights to be fee from unlawful and unreasonable seizure under the Fourth Amendment, severe bodily injury, conscious pain and suffering, economic loss, humiliation, and mental distress. Accordingly, Defendants Gulick and Curtis are liable to Monk for their deprivation of his rights in violation of 42 U.S.C. § 1983.

124. In addition to compensatory, consequential, and special damages, Monk is entitled to punitive damages against Defendants under 42 U.S.C. § 1983, in that their actions were undertaken maliciously, willfully, and/or with a reckless or wanton disregard of Monk's constitutional rights.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendants, and hold them liable, jointly and severally, to Monk for the sum of $250,000.00 in compensatory damages, $500,000.00 in punitive damages, pre-judgment and post-judgment interest, reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988, and any additional relief as the Court may deem appropriate.

COUNT IV
COMMON LAW ASSAULT

125. Plaintiff repeats and re-alleges the allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

126. This is a common law claim of assault under Virginia law.

127. Defendants placed Monk in reasonable fear of imminent physical injury through the highly offensive and unwanted touching of his person without lawful justification, excuse, or consent.

128. Defendants had the present apparent ability to carry out a battery against Monk, in light of their positions as law enforcement officers, their intimidating numerical superiority at the scene, their positioning themselves in a manner so as to alternatively get behind and then surround Monk, and the possession of multiple visible weapons worn by each officer, including service firearms, tasers and pepper spray.

129. At no time did Monk consent to any of the defendants' conduct.

130. Defendants acted intentionally, maliciously, and recklessly in causing Plaintiff to suffer reasonable fear of imminent physical injury or offensive bodily touching.

131. As a direct and proximate result of the defendants' conduct described herein, Monk suffered reasonable apprehension, severe mental anguish, embarrassment, and humiliation.

132. Defendants are liable to Monk for assault.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment against Defendants and hold them jointly and severably liable to James Monk for the sum of $250,000.00 in compensatory damages, $350,000.00 in punitive damages, prejudgment and post judgment interest, reasonable attorney's fees, costs, and any additional relief as the court may deem appropriate.

COUNT V
COMMON LAW BATTERY

133. Plaintiff repeats and re-alleges the allegations set forth in the proceeding paragraphs of the complaint as is fully set forth herein.

134. This is a common law claim for battery under Virginia law.

135. Defendants Gulick, Curtis and Schilke acted with intent to cause harmful or offensive contact with Monk's person and the intended harmful or offensive contact did in fact occur.

136. Defendants Gulick and Curtis grabbed Monk with the stated purpose of throwing him to the ground after Monk questioned his detention, all over the alleged minor offense of purportedly smelling like burnt marijuana.

137. Defendant Schilke assisted in these efforts by initially grabbing Monk, along with Gulick and Curtis, before backing away and immediately drawing his taser.

138. Defendants' physical attacks were curiously stopped and started again, the act of which was later questioned by superior officers.

139. Defendants' actions were clearly calculated to evoke fear and intimidation and actually manifested in physical and psychological torture.

140. Defendant Curtis punched Monk repeatedly about his torso while he was on the ground.

141. Defendants Gulick and Curtis deployed OC/Pepper spray to Monk's face while he was on the ground.

142. Following the second deployment of pepper spray, defendant Schilke stepped in to repeatedly punch Monk about his torso, while he was on the ground either on his back or curled onto his side in a defensive posture.

143. Defendant Gulick deployed his department issued taser while Monk was on the ground and presenting no risk of immediate danger to the Defendants or others.

144. Defendants' physical contact with Monk in the aforementioned manner was intentional, harmful, and offensive.

145. Defendants' physical contact with Monk was done without consent or lawful justification.

146. The harmful physical contact with Monk's person was done maliciously and recklessly.

147. As a direct and proximate result of Defendants' conduct, Monk suffered severe bodily injury, loss of bodily integrity, conscious pain and suffering, mental anguish, humiliation, and embarrassment.

148. Defendants are liable to Monk for battery.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment against Defendants Gulick, Curtis, and Schilke, and hold them jointly and severably liable to James Monk for the sum of $250,000.00 in compensatory damages, $350,000.00 in punitive damages, prejudgment and post judgment interest, reasonable attorney's fees, costs, and any additional relief as the court may deem appropriate.

COUNT VI
MALICIOUS PROSECUTION

149. Plaintiff adopts and re-alleges the allegations set forth in the preceding paragraphs of the complaint as fully set forth herein.

150. This is a common law claim for malicious prosecution under Virginia law.

151. Defendant Gulick intentionally and maliciously instituted and /or caused to be instituted a criminal prosecution against Monk for obstruction of justice, in violation of Va. Code § 18.2-460, in the General District Court for the County of Chesterfield (Case No. GC18007464-00)

152. This prosecution was knowingly instituted and/or caused despite the fact that the original warrant/complaint (Case No. GC 18002333-00), upon information and belief, was reviewed and nolle prossed by the Commonwealth's Attorney and/or his agents for lack of probable cause and/or a violation of Monk's constitutional rights under 42 U.S.C. § 1983.

153. As described herein, upon information and belief, Defendant Gulick procured a second warrant for obstruction after the original warrant was nolle prossed /dismissed.

154. Additionally, Gulick sought the second warrant after he was interviewed by Chesterfield Police Department supervisors and officials who made it clear that his actions were contrary to accepted policies and procedures, specifically with regard to taser deployment.

155. The act of securing a second warrant evinces that Defendant Gulick acted with actual and legal malice.

156. On November 20, 2018, upon information and belief, Monk entered a plea to have the matter taken under advisement and dismissed upon completion of community service simply to draw conclusion to the matter that had previously been resolved without prosecution. The matter was nolle prossed upon compliance with negotiated terms on December 17, 2018.

157. As a direct and proximate result of Defendant Gulick's intentional, malicious, and reckless conduct, Monk suffered economic loss, loss of liberty, mental distress, conscious pain and suffering, gross embarrassment, and humiliation.

158. As a further consequence of Defendant Gulick's unlawful and malicious conduct, Monk was required to retain counsel to represent him in criminal proceedings pursued against him, and incurred significant expenses associated with defending against the unlawful proceedings initiated by the Defendant.

159. Defendant Gulick is liable to James Monk for malicious prosecution.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendant Gulick and hold him liable to James Monk for the sum of $250,000.00 in compensatory damages, $350,000.00 in punitive damages, prejudgment and post judgment interest, reasonable attorney's fees, costs, and any additional relief as a court may deem appropriate

PRAYER FOR RELIEF

WHEREFORE, the above premises considered, Plaintiff respectfully prays that this Honorable Court:

160. Enter judgment in favor of Plaintiff and against the Defendants, jointly and severally, on all claims of relief asserted herein;

161. Award Plaintiff compensatory damages as set forth above;

162. Award Plaintiff punitive damages as set forth above;

163. Award Plaintiff reasonable expenses incurred in this litigation, including reasonable attorney fees, pursuant to 42 U.S.C. 1988, and/or under the dictates of Burruss v. Hines, 94 Va. 413, 420, 26 S.E. 875, 878 (1897), where applicable;

164. Award Plaintiff pre-judgment and post-judgment interest; and

165. Grant any and all further relief as the Court deems necessary, just and proper.

166. Plaintiff demand a trial by jury on all issues so triable herein.

Respectfully submitted,
JAMES E. MONK

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2020, I will used the ECF filing system to file this pleading which will deliver a copy of this motion response to all counsel or record herein:

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